S.B. Civil Misc. Appeal No.897/2004

Mahesh Kumar Sharma

vs.

Smt.Chhigni Devi & Ors.

DATE OF ORDER : - 11.8.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.G.R.Punia, for the appellant.
Mr.M.L.Panwar, for the respondent.

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Heard learned counsel for the parties.

The appellant has challenged the order of the trial court dated 11th May, 2004 by which the appellant-plaintiff's application for grant of injunction under Order 39 Rule 1 and 2 CPC was dismissed by the trial court.

Brief facts of the case are that the plaintiff filed the suit alleging that the respondents no.1 and 2 owned house, which they agreed to sell to the plaintiff for a consideration of Rs.5 lacs. The plaintiff paid Rs.55,000/- as advance sale price to the respondent no.2. It is alleged that the respondent no.2 confirmed the oral agreement by writing dated 8th Nov., 2001. It is submitted that the respondents n.1 and 2 are the residents of Calcutta. It is alleged that respondent no.2, to obtain power of attorney of his mother respondent no.1, went to Calcutta, but with the help of other persons including the

respondents no.2,3 and 5, the respondents no.1 and 2 are intending to sell the property to other. Therefore, the appellant plaintiff served a notice on 4th May, 2004 upon the respondents no.1 and 2. The plaintiff also went to Calcutta on 25th May, 2004 to meet respondents no.1 and 2, but they refused to comply with the agreement and they got the house vacated from the tenants and they started construction in the house on war level. In these circumstances, the plaintiff filed the suit for specific performance of contract and for grant of injunction.

The defendants no.1 and 2 as well as defendant no.3, who are the respondents no.1 to 3 submitted their reply before the trial court. The trial court after considering all the facts and circumstances of the case, dismissed the injunction application of the plaintiff.

Learned counsel for the appellant vehemently submitted that the appellant-plaintiff paid Rs.55,000/- to the respondent no.2 and there is oral agreement and during the pendency of the suit, the respondents cannot be allowed to change the position of the property in dispute nor they can be allowed to alienate the property. Learned counsel for the appellant heavily relied upon the judgment of the Hon'ble Supreme Court reported in 1990 (Suppl.) SCC 727 wherein it has been held that during the pendency of the suit, the property is required to be protected.

Learned counsel for the appellant also provided the laminated copy of the letter dated 8th Dec., 2001 and the order of the Devsthan Department dated 29th Oct., 1990 as

well as copy of the notice dated 4th May, 2002.

Learned counsel for the respondent submitted that the property in question was given to the trust rather a trust has already been created for the property by registered deed dated 19.7.88. It is also submitted that the plaintiff could not make out any case even prima facie and the case set up by the plaintiff appears to be absolutely concocted one.

I considered the submissions of learned counsel for the parties and perused the documents shown by the parties. It is clear that alleged agreement is oral one. It is said that agreement was confirmed by letter dated 8th Dec., 2001. The letter dated 8th Dec., 2001 is alleged to have been written by respondent no.2 only and in this letter on page no.2 it is mentioned that in view of the author of the letter, the agreement may be made in favour of the person, who pays the amount first. Therefore, prima facie it appears that till that day, there was no concluded contract at all as per the document produced by the appellant himself. Not only this, but in the latter part of the said letter, which is written in ink, as earlier part of the letter is carbon copy of the some letter, it is mentioned that any other profit if will accrue, it will be of yours. There is mention of some trust also. All these facts prima facie make it clear that there was no evidence available on record at this stage to draw inference of concluded contract. The letter dated 8th Dec., 2001 and its contents also appear to be quite vague and at this stage, cannot help the plaintiff unless explained properly. The document

itself casts some doubt on the case set up by the plaintiff.

The order dated 29th August, 1990 is an order of rejection of the application for registration of trust submitted by one Ram Niwas Toshniwal respondent no.3. This application was dismissed as nobody appeared in evidence to prove the claim of the applicant Ram Niwas Toshniwal respondent no.3. At the same time, the court cannot ignore the registered document, which was executed on 19th August, 1988 by which it is alleged that the trust has been created for the property in dispute and the ownership vests in the trust.

In view of these facts when plaintiff failed to make out any prima facie case, I do not find that the trial court has committed any illegality in dismissing the injunction application.

More emphasis of learned counsel for the appellant was on that during the pendency of the suit, the property is required to be kept as it is. The principle cannot be applied in all cases in all circumstances.

Hence, I do not find any merit in this appeal and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-